

## REMARKS/ARGUMENTS

Applicant had considered all points made by the Examiner in the Office Action dated December 12, 2001 and has incorporated Examiner's suggestions to ensure compliance with the applicable rules.

### A. Specification

Examiner has reminded applicant of the proper language and format for an abstract of the disclosure, which has been amended accordingly. Applicant notes that the Abstract as amended consists of 247 words, which is within the 50 - 250 word range indicated by the Examiner.

### B. Claim Rejections – 35 USC §102(b)

Examiner has rejected Claim 1 under 35 U.S.C. §102(b) as being unpatentable by Bertwell et al. (U.S. 5,358,503).

Claim 1 has been amended to incorporate the highly, reticulated open cell foam, and the insertion of the pad within a wound bed, as is commonly associated with vacuum assisted wound closure therapy, which distinguishes the present invention over the prior art.

It should be noted that Bertwell does not disclose the use of an open-cell reticulated foam, and in fact does not exemplify the type of "pad" to be used in the invention. Similarly, the pad is used for "photo-thermal treatment of an area of the skin and adjacent subcutaneous structure," (See Column 2, lines 60-61), whereas the present invention is defined to treat wounds.

### C. Claim Rejections – 35 USC §103(a)

Examiner has rejected Claims 1, 4, 9, and 11 under 35 U.S.C. §103(a) as being unpatentable over Bertwell et al. (U.S. 5,358,503) in view of Hunt et al. (U.S. 6,142,982).

Under 35 U.S.C. §103(c), subject matter developed by another person which qualifies as prior art under 102(e) shall not preclude patentability under 103 where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. U.S. Patent No. 6,142,982 to Hunt et al. and the present application were, at the time the invention was made, owned by or subject to an obligation of assignment to the same company. A formal statement to that effect is attached.

Examiner has rejected Claims 2,5,6,7,8,10, and 12 under 35 U.S.C. §103(a) as being unpatentable over Bertwell et al. (U.S. 5,358,503) in view of Thiberg (U.S. 5,766,233). As claim 1 has been amended to further distinguish it from Bertwell, and claims 2,5,6,7,8,10, and 12 are dependent on claim 1, which by definition include all the limitations of the claim to which they depend, Applicant respectfully asserts that the invention of Bertwell is not disclosed in claim 2, and therefore the rejections of claims 2,5,6,7,8,10, and 12 are deemed moot.

**D. Allowable subject matter.**

The Examiner has indicated that claim 3 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, as set forth in the office action, and to include all of the limitations of the base claim and any intervening claims. Applicant, however, wishes to point out that Examiner has not set forth any rejections under 35 U.S.C. 112, second paragraph in the current office action. Furthermore, as Applicant has amended claim 1 to overcome rejections based upon Bertwell, and that claim 3 is dependent upon claim 2, which in turn is dependent upon claim 1, Applicant respectfully asserts that any objection to claim 3 is now moot, and that the claim as written is in condition for allowance.

Nonetheless, and without the intention of forfeiting any rights that may be associated with equivalent interpretations of claim 3 as originally written, Applicant has added new claim 13, which includes all of the limitations of base claim 3 and intervening claims 1 and 2.

**E. Conclusion**

In view of the above, it is submitted that the claims are in a condition for allowance. Reconsideration and withdrawal of the rejections are hereby respectfully requested. Allowance of Claims 1-12 at an early date is solicited.

Attached hereto is a marked-up version of the changes made to the application and claims by the current amendment. The attached page is captioned **“Version with markings to show changes made.”**

Applicant respectfully requests favorable consideration.

Respectfully submitted,



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**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

The Abstract has been amended as follows:

A modified vacuum assisted wound closure system adapted for concurrent applications of phototherapy [generally comprises] having a foam pad for insertion substantially into the wound site and a wound drape for sealing enclosure of the foam pad at the wound site. The foam pad [is modified to comprise] includes an optical pigtail, whereby desired wavelength of light may be directed into and about the wound site. The foam pad is placed in fluid communication with a vacuum source for promotion of fluid drainage. The foam pad [comprises] is made of a highly reticulated, open-cell polyurethane or polyether foam for good permeability of wound fluids while under suction and is also [provided] embedded with an optical pigtail. The optical pigtail comprises an optical fiber that has been formed to fan into a plurality of sections. The fibers of the most distal fanned sections, which are implanted in the foam pad at its base, are provided with tiny optical slots, oriented away from the foam pad and toward the wound site. Each optical slot is made by stripping the cladding from the optical fiber in the desired areas of the fanned sections to form slot radiators. Because it is necessary to trim the foam pad in preparation for therapy, the optical fibers comprise plastics, such as acrylic or styrene. Upon placement of the pad, having the optical pigtail embedded therein, the wound drape is firmly adhered about the VAC therapy suction hose as well as the extending optical fiber to prevent vacuum leakage.

Claim 1 has been amended as follows:


1. (Amended) A pad [suitable] for [use in vacuum assisted wound closure therapy that also comprises] **insertion into a wound bed, said pad comprising:**  
**a highly reticulated open-cell foam; and**  
**a means for providing phototherapy.**

**STATEMENT OF COMMON OWNERSHIP**  
**DECLARATION**

I hereby declare that all statements made herein of my own knowledge are true, all statements made herein on information and belief are believed to be true, and all statements made herein are made with the knowledge that whoever, in any matter within the jurisdiction of the Patent and Trademark Office, knowingly and willfully falsifies, conceals, or covers up by statements or representations, or makes or uses any false writing or document knowing the same to contain any false or fictitious or fraudulent statement or entry, shall be subject to fine not more than \$10,000 or imprisonment not more than five years or both, under 18 U.S.C. 1001, and that violations of this paragraph may jeopardize the validity of this application or document, or the validity or enforceability of any patent, trademark, registration, or certificate resulting therefrom; and to the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, this paper is not being presented for any purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of prosecution before the Office; the claims and other legal contentions herein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; the allegations and other factual contentions have evidentiary support after a reasonable opportunity for further investigation or discovery; and the denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

U.S. Application Serial No. 09/544,399 and U.S. Patent No. 6,142,982 were, at the time the invention of U.S. Application Serial No. 09/544,399 was made, owned by, and/or subject to assignment to Kinetic Concepts, Inc.

KCI LICENSING, INC.

  
By: Michael Burke  
Title: Vice-President